

17 Nov 1978

MEMORANDUM FOR: Office of Legislative Counsel

ATTENTION:

[Redacted]

OLC #78-1959

VIA: Deputy Director for Administration

FROM:

[Redacted]

Chief, Procurement Management Staff  
Office of Logistics

SUBJECT: Contract Disputes Act of 1978

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1. The policy expressed in subject Bill of resolving contractor claims by mutual agreement in lieu of litigation, as well as the establishment of procedures for appeal of a Contracting Officer's decision to an agency board of contract appeals within 90 days is meritorious.

2. You should be aware that a companion Bill, H.R. 1102, has been introduced in the House. Several Bills conveying similar themes were introduced in the House and Senate last year as you know; i.e., H.R. 3745, H.R. 4713, H.R. 4793, H.R. 9975 and S. 2292. These Bills are based upon recommendation of the Commission on Government Procurement.

3. Those features of the subject Bill which appear to mitigate against prompt and/or less formal resolution of contractor claims and which, therefore, are objectionable provide that a contractor:

a. has 12 months in which to appeal a decision of a board of contract appeals;

b. may, at his discretion, go directly to the appropriate court, i.e., U. S. district court or U. S. Court of Claims, without first going to a board of contract appeals and exhausting the administrative remedies to the parties. Again, the Bill provides for a 12-month period in which to make such an appeal.

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4. Procurement Management Staff recommends that the Office of Legislative Counsel (OLC) express opposition to those provisions of S.2787 which provide for an appeal procedure which exceeds 90 days and which would permit a contractor to appeal a Contracting Officer's decision without first exhausting the administrative remedies provided by the Bill.

5. The foregoing comments have been telephonically communicated to [redacted] Further inquiries on this matter may be directed to [redacted] extension [redacted]

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cc: DDA